

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official capacities as members of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

James H. Bilbray
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER: **005 5583** JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

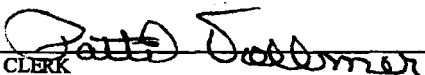
BRUCE RIFKIN

SEP - 7 2001

CLERK

DATE

(By) DEPUTY CLERK



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES) USE THE LOCATION OF THE
AND INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY RIGHTS	BANKRUPTCY	OTHER MATTERS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER MATTERS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

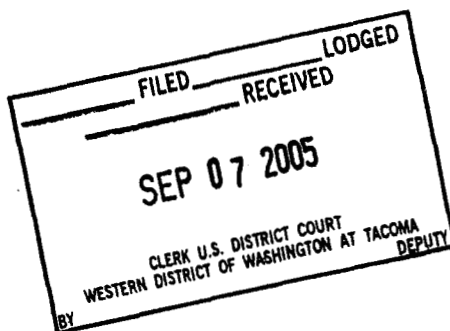
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3 I. NATURE OF THE CASE

4 1. This case arises out of defendants' attempts, unilaterally and without seeking or
5 obtaining approval from the Governor of the State of Washington, to fundamentally change
6 units of the Washington Air National Guard under the guise of a recommendation made
7 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
8 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
9 Fairchild Air Force Base" contains the following four elements, which will hereafter be
10 collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
5 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
26 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 **IV. THE BRAC ACT**

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
26 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air
.6

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 Associating the 141st Air Refueling Wing

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfeld does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.

47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

Relocating the 256th

48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.

49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.

50. Relocating the 256th to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

Relocating the 242^d

51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242nd Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.

52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 VII. FIRST CAUSE OF ACTION

6 Exceeds BRAC Act Authority

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
5 Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

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Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT B

The Honorable Donald H. Rumsfeld
August 9, 2005
Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gregoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

Phillip E. Coyle
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER:

C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

SEP -7 2005

CLERK

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY) USE THE LOCATION OF THE
INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	PROPERTY RIGHTS	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations				<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare				<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

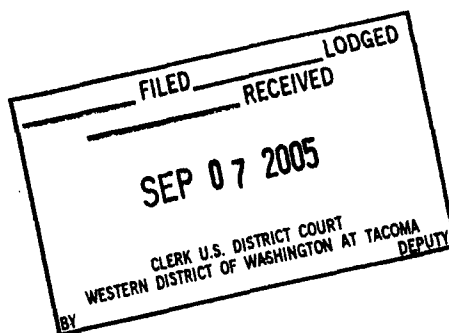
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3 I. NATURE OF THE CASE

4 1. This case arises out of defendants' attempts, unilaterally and without seeking or
5 obtaining approval from the Governor of the State of Washington, to fundamentally change
6 units of the Washington Air National Guard under the guise of a recommendation made
7 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
8 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
9 Fairchild Air Force Base" contains the following four elements, which will hereafter be
10 collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
6 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
6 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 **IV. THE BRAC ACT**

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
5 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 V. NATURE OF THE NATIONAL GUARD

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 VI. THE PROPOSED REALIGNMENT

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] not consent to the realignment of the 141st Air
6

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 **Distributing the 141st's KC-135s**

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.

Relocating the 256th

49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.

Relocating the 242^d

52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 VII. FIRST CAUSE OF ACTION

6 Exceeds BRAC Act Authority

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
6 Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

1 X. PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays that judgment be entered in its favor and against
3 defendants and that the Court grant the following relief:

4 A. An Order declaring that defendants' Proposed Realignment exceeds their
5 statutory authority under the BRAC Act, is null and void, and shall not be implemented;

6 B. An Order declaring that the defendants' Proposed Realignment violates
7 32 U.S.C. § 104, is null and void, and shall not be implemented;

8 C. An Order declaring that the defendants' Proposed Realignment violates the
9 Second Amendment to the United States Constitution, is null and void, and shall not be
10 implemented;


11 D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing
12 this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

13 E. Further Orders providing such additional legal or equitable relief as this Court
14 may deem just and proper.

15 DATED this 7th day of September, 2005.

16 Respectfully submitted,

17 ROB MCKENNA
18 Attorney General

19 
20 SARA J. FINLAY, WSBA #1821
21 Senior Counsel
22 Attorneys for Plaintiff
23
24
25

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations**Joint Center of Excellence for Religious Training & Education**

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE D. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT 6

The Honorable Donald H. Rumsfeld
August 9, 2005
Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gragoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

Harold W. Gehman, Jr.
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER:

C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

CLERK

DATE

(By) DEPUTY CLERK

[Signature]

SEP -7

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant Thurston
(IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE
COUNTY OF THE DEFENDANT INVOLVED.)

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY	LABOR	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

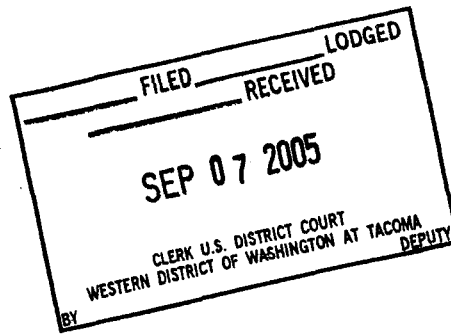
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3
4 I. NATURE OF THE CASE

5 1. This case arises out of defendants' attempts, unilaterally and without seeking or
6 obtaining approval from the Governor of the State of Washington, to fundamentally change
7 units of the Washington Air National Guard under the guise of a recommendation made
8 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
9 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
10 Fairchild Air Force Base" contains the following four elements, which will hereafter be
collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
6 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
26 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 IV. THE BRAC ACT

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
6 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
6 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfeld does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 VII. FIRST CAUSE OF ACTION

6 Exceeds BRAC Act Authority

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
5 Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 VIII. SECOND CAUSE OF ACTION

8 Violates 32 U.S.C. § 104

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

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X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;

B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;

C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;

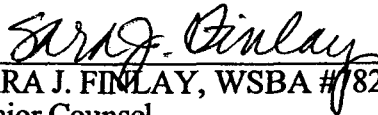
D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA
Attorney General


SARA J. FINLAY, WSBA #7821
Senior Counsel
Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT

B

The Honorable Donald H. Rumsfeld

August 9, 2005

Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gregoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

James V. Hansen
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER: C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

SEP - 7

CLERK

Sara J. Finlay

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

USE THE LOCATION OF THE AN INVOLVED.

Attorneys (Firm Name)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF ☐ 1 DEF ☐ 1
Incorporated or Principal Place of Business In This State PTF ☐ 4 DEF ☐ 4
Citizen of Another State PTF ☐ 2 DEF ☐ 2
Incorporated and Principal Place of Business In Another State PTF ☐ 5 DEF ☐ 5
Citizen or Subject of a Foreign Country PTF ☐ 3 DEF ☐ 3
Foreign Nation PTF ☐ 6 DEF ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREIGN DISPUTES	LABOR	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 190 Stockholders' Suits <input type="checkbox"/> 200 Other Contract <input type="checkbox"/> 210 Contract Product Liability <input type="checkbox"/> 220 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROFESSIONAL FEES <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 OTHER STATUTES <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

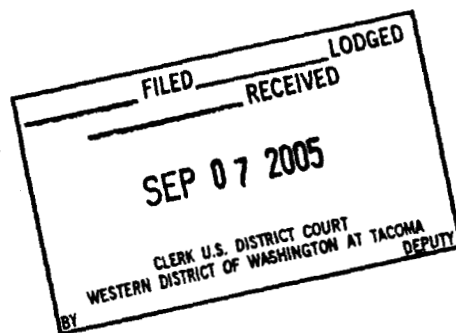
Sara J. Finlay

FILE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CHRISTINE O. GREGOIRE, Governor of the
9 State of Washington,

10 Plaintiff,

11 v.

12 DONALD H. RUMSFELD, in his official capacity
13 as Secretary of Defense; ANTHONY J. PRINCIPI,
14 in his official capacity as Chairman of the Defense
15 Base Closure and Realignment Commission; and
16 JAMES H. BILBRAY, PHILLIP E. COYLE,
17 HAROLD W. GEHMAN, JR., JAMES V.
18 HANSEN, JAMES T. HILL, LLOYD W.
19 NEWTON, SAMUAL K. SKINNER, and
20 SUE ELLEN TURNER, in their official capacities
21 as members of the Defense Base Closure and
22 Realignment Commission,

23 Defendants.

NC C05 5583

COMPLAINT

24 Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
25 State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3
4 I. NATURE OF THE CASE

5 1. This case arises out of defendants' attempts, unilaterally and without seeking or
6 obtaining approval from the Governor of the State of Washington, to fundamentally change
7 units of the Washington Air National Guard under the guise of a recommendation made
8 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
9 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
10 Fairchild Air Force Base" contains the following four elements, which will hereafter be
collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
26 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
.6 Commission"). He is sued in his official capacity only.

8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

IV. THE BRAC ACT

9. The stated purpose of the BRAC Act is to “provide a fair process that will result in the timely closure and realignment of military installations inside the United States.” BRAC Act § 2901(b).

10. As used in the BRAC Act, the term “military installation” is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term “realignment” includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the *Federal Register* and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
6 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfeld does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
6 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

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46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.

47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

Relocating the 256th

48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.

49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.

50. Relocating the 256th to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

Relocating the 242^d

51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242nd Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.

52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

5

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.
25

1 X. PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays that judgment be entered in its favor and against
3 defendants and that the Court grant the following relief:

4 A. An Order declaring that defendants' Proposed Realignment exceeds their
5 statutory authority under the BRAC Act, is null and void, and shall not be implemented;

6 B. An Order declaring that the defendants' Proposed Realignment violates
7 32 U.S.C. § 104, is null and void, and shall not be implemented;

8 C. An Order declaring that the defendants' Proposed Realignment violates the
9 Second Amendment to the United States Constitution, is null and void, and shall not be
10 implemented;


11 D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing
12 this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

13 E. Further Orders providing such additional legal or equitable relief as this Court
14 may deem just and proper.

15 DATED this 7th day of September, 2005.

16 Respectfully submitted,

17 ROB MCKENNA
18 Attorney General

19 
20 SARA J. FINLAY, WSBA #7821
21 Senior Counsel
22 Attorneys for Plaintiff
23
24
25
6

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations**Joint Center of Excellence for Religious Training & Education**

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT 6

The Honorable Donald H. Rumsfeld

August 9, 2005

Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gregoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

James T. Hill
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER: C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIEKIN

SEP - 7

CLERK

Patricia Sommer

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES)

USE THE LOCATION OF THE
AND INVOLVED.

Attorneys (Firm Name)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF ☐ 1 DEF ☐ 1
Incorporated or Principal Place of Business in This State PTF ☐ 4 DEF ☐ 4
Citizen of Another State PTF ☐ 2 DEF ☐ 2
Incorporated and Principal Place of Business in Another State PTF ☐ 5 DEF ☐ 5
Citizen or Subject of a Foreign Country PTF ☐ 3 DEF ☐ 3 Foreign Nation PTF ☐ 6 DEF ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/REPLEVIN	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 190 Stockholders' Suits <input type="checkbox"/> 200 Other Contract <input type="checkbox"/> 210 Contract Product Liability <input type="checkbox"/> 220 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER'S ACTIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) OTHER STATUTES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/7/2005

SIGNATURE OF ATTORNEY OF RECORD

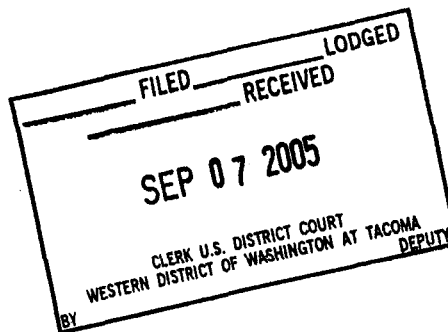
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; **ANTHONY J. PRINCIPI**,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, **PHILLIP E. COYLE**,
HAROLD W. GEHMAN, JR., **JAMES V.**
HANSEN, **JAMES T. HILL**, **LLOYD W.**
NEWTON, **SAMUAL K. SKINNER**, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff **CHRISTINE O. GREGOIRE**, in her official capacity as Governor of the
State of Washington, by and through her attorney, **ROB MCKENNA**, Attorney General of
the State of Washington, and **SARA J. FINLAY**, Senior Counsel, submits the following
Complaint against the defendants, **DONALD H. RUMSFELD**, in his official capacity as
Secretary of Defense; **ANTHONY J. PRINCIPI**, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and **JAMES H. BILBRAY**, **PHILLIP**
E. COYLE, **HAROLD W. GEHMAN, JR.**, **JAMES V. HANSEN**, **JAMES T. HILL**, **LLOYD**
W. NEWTON, **SAMUAL K. SKINNER**, and **SUE ELLEN TURNER**, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3
4 I. NATURE OF THE CASE

5 1. This case arises out of defendants' attempts, unilaterally and without seeking or
6 obtaining approval from the Governor of the State of Washington, to fundamentally change
7 units of the Washington Air National Guard under the guise of a recommendation made
8 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
9 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
10 Fairchild Air Force Base" contains the following four elements, which will hereafter be
11 collectively referred to as the "Proposed Realignment":

12 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
13 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
14 Washington ("Fairchild");

15 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
16 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
17 Refueling Wing;

18 (c) the 256th Combat Communications Squadron of the Washington Air National
19 Guard currently located at the Four Lakes Communications Station outside Cheney,
20 Washington will be "relocated" to Fairchild; and

21 (d) the 242nd Combat Communications Squadron of the Washington Air National
22 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
23 Fairchild.

24 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
25 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

26 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
.6 Commission"). He is sued in his official capacity only.

8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner have been named by the President of the United States to be members of the BRAC Commission. They are sued in their official capacities only.

IV. THE BRAC ACT

9. The stated purpose of the BRAC Act is to “provide a fair process that will result in the timely closure and realignment of military installations inside the United States.” BRAC Act § 2901(b).

10. As used in the BRAC Act, the term "military installation" is defined as:

a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

BRAC Act § 2910(4).

11. As used in the BRAC Act, the term “realignment” includes:

any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

BRAC Act § 2910(5).

12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the Department of Defense was required to publish in the *Federal Register* and transmit to the congressional defense committees and the BRAC Commission a "list of the military installations inside the United States that the Secretary recommends for closure or realignment" consistent with the BRAC Act, the force-structure plan and military value and other criteria established thereunder. Defendant Rumsfeld submitted his BRAC recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
6 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfeld does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
6 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

53. Relocating the 242^d from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

VII. FIRST CAUSE OF ACTION

Exceeds BRAC Act Authority

54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.

55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.

56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.

57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.

58. Defendants' recommendations to "associate" the 141st unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a **Declaratory Judgment** declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

1 X. PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays that judgment be entered in its favor and against
3 defendants and that the Court grant the following relief:

4 A. An Order declaring that defendants' Proposed Realignment exceeds their
5 statutory authority under the BRAC Act, is null and void, and shall not be implemented;

6 B. An Order declaring that the defendants' Proposed Realignment violates
7 32 U.S.C. § 104, is null and void, and shall not be implemented;

8 C. An Order declaring that the defendants' Proposed Realignment violates the
9 Second Amendment to the United States Constitution, is null and void, and shall not be
10 implemented;

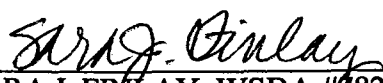
11 D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing
12 this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

13 E. Further Orders providing such additional legal or equitable relief as this Court
14 may deem just and proper.

15 DATED this 7th day of September, 2005.

16 Respectfully submitted,

17 ROB MCKENNA
18 Attorney General

19 
20 SARA J. FINLAY, WSBA #7821
21 Senior Counsel
22 Attorneys for Plaintiff
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Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations**Joint Center of Excellence for Religious Training & Education**

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(a) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT B

The Honorable Donald H. Rumsfeld

August 9, 2005

Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gragoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

Lloyd W. Newton
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER: C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

SEP -7

CLERK

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY) USE THE LOCATION OF THE
NOTICE OF PETITION FOR WRIT OF HABEAS CORPUS AND CONDEMNATION CASE USE THE LOCATION OF THE
AND INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 4 ☐ 4 ☐ 5 ☐ 5 ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FOREIGN/INJURY	UNEMPLOYMENT	OTHER SUITS
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations				<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare				<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:
Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

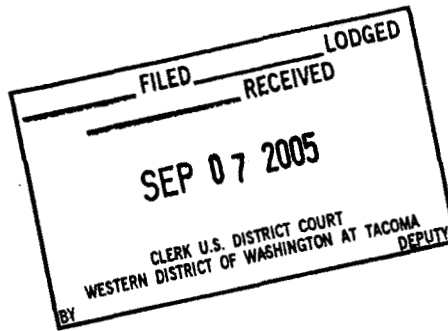
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

capacities as members of the Defense Base Closure and Realignment Commission, as follows:

I. NATURE OF THE CASE

1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":

(a) the 141st Air Refueling Wing of the Washington Air National Guard will "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");

(b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;

(c) the 256th Combat Communications Squadron of the Washington Air National Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and

(d) the 242nd Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.

2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

(a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
6 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 IV. THE BRAC ACT

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
26 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 Associating the 141st Air Refueling Wing

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 VII. FIRST CAUSE OF ACTION

6 Exceeds BRAC Act Authority

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
6 Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

1 X. PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays that judgment be entered in its favor and against
3 defendants and that the Court grant the following relief:

4 A. An Order declaring that defendants' Proposed Realignment exceeds their
5 statutory authority under the BRAC Act, is null and void, and shall not be implemented;

6 B. An Order declaring that the defendants' Proposed Realignment violates
7 32 U.S.C. § 104, is null and void, and shall not be implemented;

8 C. An Order declaring that the defendants' Proposed Realignment violates the
9 Second Amendment to the United States Constitution, is null and void, and shall not be
10 implemented;


11 D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing
12 this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

13 E. Further Orders providing such additional legal or equitable relief as this Court
14 may deem just and proper.

15 DATED this 7th day of September, 2005.

16 Respectfully submitted,

17 ROB MCKENNA
18 Attorney General

19 
20 SARA J. FINLAY, WSBA #7821
21 Senior Counsel
22 Attorneys for Plaintiff
23
24
25

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations**Joint Center of Excellence for Religious Training & Education**

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT B

The Honorable Donald H. Rumsfeld
August 9, 2005
Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gragoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

Anthony J. Principi, Chairman
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER: **C05 5583** JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

SEP -7 2005

CLERK

[Signature]

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY) USE THE LOCATION OF THE
NOTICE AND CONDEMNATION CASE INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	PROPERTY DAMAGE	PROPERTY DAMAGE	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 1 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 2 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations				<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare				<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

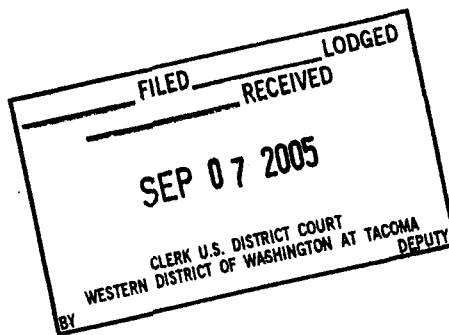
Sara J. Finlay

FILE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3 I. NATURE OF THE CASE

4 1. This case arises out of defendants' attempts, unilaterally and without seeking or
5 obtaining approval from the Governor of the State of Washington, to fundamentally change
6 units of the Washington Air National Guard under the guise of a recommendation made
7 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
8 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
9 Fairchild Air Force Base" contains the following four elements, which will hereafter be
10 collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
26 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
26 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 IV. THE BRAC ACT

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
26 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air
26

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfeld does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 **Distributing the 141st's KC-135s**

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 **VII. FIRST CAUSE OF ACTION**

6 **Exceeds BRAC Act Authority**

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

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X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;

B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;

C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;

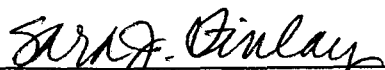
D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA
Attorney General


SARA J. FINLAY, WSBA #7821
Senior Counsel
Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations**Joint Center of Excellence for Religious Training & Education**

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 733-6720 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

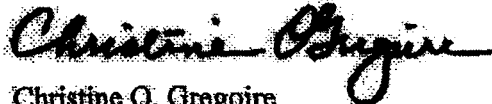
EXHIBIT

B

The Honorable Donald H. Rumsfeld
August 9, 2005
Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gragoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

Defendants.

TO: (Name and address of Defendant)

Samual K. Skinner
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

CASE NUMBER:

C05 5583 JKA

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

SEI - 7

CLERK

DATE

(By) DEPUTY CLERK

Sara J. Finlay

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY) USE THE LOCATION OF THE
COUNTY INVOLVED.

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Plaintiff Defendant
- ☐ 1 Citizen of This State ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- ☐ 2 Citizen of Another State ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- ☐ 3 Citizen or Subject of a Foreign Country ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY RIGHTS	LABOR	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) DEFENDANT <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

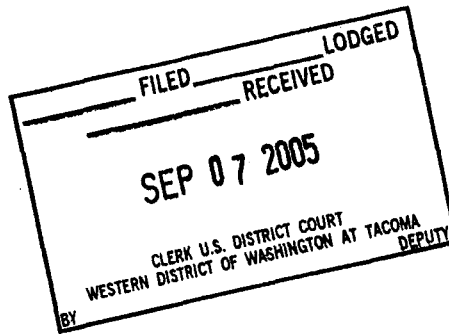
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

capacities as members of the Defense Base Closure and Realignment Commission, as follows:

I. NATURE OF THE CASE

1. This case arises out of defendants' attempts, unilaterally and without seeking or obtaining approval from the Governor of the State of Washington, to fundamentally change units of the Washington Air National Guard under the guise of a recommendation made pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign Fairchild Air Force Base" contains the following four elements, which will hereafter be collectively referred to as the "Proposed Realignment":

(a) the 141st Air Refueling Wing of the Washington Air National Guard will "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane, Washington ("Fairchild");

(b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard Refueling Wing;

(c) the 256th Combat Communications Squadron of the Washington Air National Guard currently located at the Four Lakes Communications Station outside Cheney, Washington will be "relocated" to Fairchild; and

(d) the 242nd Combat Communications Squadron of the Washington Air National Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to Fairchild.

2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

(a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
26 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 IV. THE BRAC ACT

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.

13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
26 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.

47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

Relocating the 256th

48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.

49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.

50. Relocating the 256th to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

Relocating the 242^d

51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242nd Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.

52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

1 53. Relocating the 242^d from state-owned land to Fairchild without the Governor's
2 consent would impair the Governor's rights and obligations as Commander-in-Chief of the
3 state militia, and impair her ability to interact with and access one of her state National Guard
4 units.

5 **VII. FIRST CAUSE OF ACTION**

6 **Exceeds BRAC Act Authority**

7 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53,
8 inclusive, as though fully set forth herein.

9 55. Defendants exceeded their BRAC statutory authority by inappropriately
10 attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or
11 location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air
12 National Guard's KC-135 aircraft.

13 56. Defendants exceeded their BRAC statutory authority by inappropriately
14 attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped
15 or organized.

16 57. Defendants exceeded their BRAC statutory authority by inappropriately
17 attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the
18 organization of the Washington Air National Guard.

19 58. Defendants' recommendations to "associate" the 141st unit and "distribute" the
20 KC-135s assigned to it are not recommendations for the closure or realignment of a military
21 installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

22 59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are
23 not recommendations for the closure or realignment of a military installation under the BRAC
24 Act, and do not meet the BRAC Act definitions and criteria.

25 60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
5 Declaratory Judgment declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 VIII. SECOND CAUSE OF ACTION

8 Violates 32 U.S.C. § 104

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

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X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;

B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;

C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;

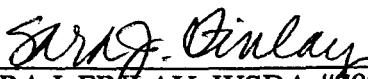
D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA
Attorney General


SARA J. FINLAY, WSBA #1821
Senior Counsel
Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE Q. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT

B

The Honorable Donald H. Rumsfeld
August 9, 2005
Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,



Christine O. Gregoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission
The Honorable Maria Cantwell, U.S. Senate
The Honorable Patty Murray, U.S. Senate
The Honorable Brian Baird, U.S. House of Representatives
The Honorable Norm Dicks, U.S. House of Representatives
The Honorable Richard Hastings, U.S. House of Representatives
The Honorable Jay Inslee, U.S. House of Representatives
The Honorable Rick Larsen, U.S. House of Representatives
The Honorable Jim McDermott, U.S. House of Representatives
The Honorable Cathy McMorris, U.S. House of Representatives
The Honorable Dave Reichert, U.S. House of Representatives
The Honorable Adam Smith, U.S. House of Representatives
The Honorable Mike Huckabee, Chair, National Governors Association
Doug Clapp, Office of the Governor

UNITED STATES DISTRICT COURT

Western District of Washington

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the Defense Base
Closure and Realignment Commission; and JAMES H.
BILBRAY, PHILLIP E. COYLE, HAROLD W.
GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL,
LLOYD W. NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities as members
of the Defense Base Closure and Realignment Commission,

CASE NUMBER:

C05 5583 JKA

Defendants.

TO: (Name and address of Defendant)

Sue Ellen Turner
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Suite 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Sara J. Finlay, Senior Counsel
Office of the Attorney General
Government Operations Division
PO Box 40108
Olympia, WA 98504-0108

an answer to the complaint which is served on you with this summons, within 60 days after service
of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the
Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

CLERK

Patti Tossmer

DATE

(By) DEPUTY CLERK

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

A. (a) PLAINTIFFS

Gregoire, Christine O.
Governor of the State of Washington

(b) County of Residence of First Listed Plaintiff Thurston
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Office of the Attorney General, PO Box 40108, Olympia, WA
98504-0108, (360) 586-2436, Sara J. Finlay, Sr. Counsel

DEFENDANTS

See Attached List

County of Residence of First Listed Defendant Thurston
(IN U.S. PLAINTIFF CASES, USE THE LOCATION OF THE
AND INVOLVED.)

Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREIGN/INJURY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> Medicare Act <input type="checkbox"/> 2 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const. 2nd Amendment, 10 U.S.C. § 2687 note, 32 U.S.C. § 104

Brief description of cause:

Defendants' Air National Guard base closure actions violate U.S. Statutes and U.S. Constitution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/2005

SIGNATURE OF ATTORNEY OF RECORD

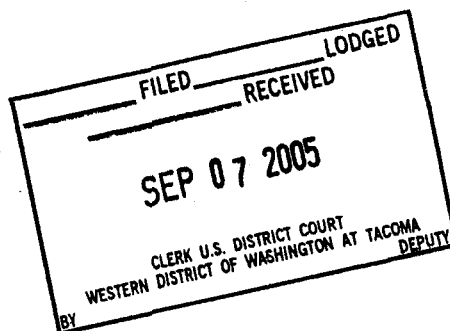
Sara J. Finlay

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS

RUMSFELD, DONALD H., in his official capacity as Secretary of Defense;
PRINCIPI, ANTHONY J., in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission; and
BILBRAY, JAMES H.
COYLE, PHILLIP E.
GEHMAN, JR., HAROLD W.
HANSEN, JAMES V.
HILL, JAMES T.
NEWTON, LLOYD W.
SKINNER, SAMUAL K. and
TURNER, SUE ELLEN, in their official capacities as members of the Defense Base Closure and
Realignment Commission,



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE O. GREGOIRE, Governor of the
State of Washington,

Plaintiff,

v.

DONALD H. RUMSFELD, in his official capacity
as Secretary of Defense; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the Defense
Base Closure and Realignment Commission; and
JAMES H. BILBRAY, PHILLIP E. COYLE,
HAROLD W. GEHMAN, JR., JAMES V.
HANSEN, JAMES T. HILL, LLOYD W.
NEWTON, SAMUAL K. SKINNER, and
SUE ELLEN TURNER, in their official capacities
as members of the Defense Base Closure and
Realignment Commission,

Defendants.

NO **C05 5583**

COMPLAINT

Plaintiff CHRISTINE O. GREGOIRE, in her official capacity as Governor of the
State of Washington, by and through her attorney, ROB MCKENNA, Attorney General of
the State of Washington, and SARA J. FINLAY, Senior Counsel, submits the following
Complaint against the defendants, DONALD H. RUMSFELD, in his official capacity as
Secretary of Defense; ANTHONY J. PRINCIPI, in his official capacity as Chairman of the
Defense Base Closure and Realignment Commission; and JAMES H. BILBRAY, PHILLIP
E. COYLE, HAROLD W. GEHMAN, JR., JAMES V. HANSEN, JAMES T. HILL, LLOYD
W. NEWTON, SAMUAL K. SKINNER, and SUE ELLEN TURNER, in their official

1 capacities as members of the Defense Base Closure and Realignment Commission, as
2 follows:

3 I. NATURE OF THE CASE

4 1. This case arises out of defendants' attempts, unilaterally and without seeking or
5 obtaining approval from the Governor of the State of Washington, to fundamentally change
6 units of the Washington Air National Guard under the guise of a recommendation made
7 pursuant to the Defense Base Closure and Realignment Act of 1990, as amended, codified at
8 10 U.S.C. § 2687 note (the "BRAC Act"). The challenged recommendation to "Realign
9 Fairchild Air Force Base" contains the following four elements, which will hereafter be
10 collectively referred to as the "Proposed Realignment":

11 (a) the 141st Air Refueling Wing of the Washington Air National Guard will
12 "associate" with the 92d Air Refueling Wing at Fairchild Air Force Base in Spokane,
13 Washington ("Fairchild");

14 (b) all eight of the KC-135R aircraft assigned to Washington Air National Guard's
15 141st Air Refueling Wing will be "distributed" to an Iowa Air National Guard
16 Refueling Wing;

17 (c) the 256th Combat Communications Squadron of the Washington Air National
18 Guard currently located at the Four Lakes Communications Station outside Cheney,
19 Washington will be "relocated" to Fairchild; and

20 (d) the 242nd Combat Communications Squadron of the Washington Air National
21 Guard currently located at Geiger Field in Spokane, Washington will be "relocated" to
22 Fairchild.

23 2. Plaintiff does not challenge the validity of the BRAC Act. Rather, plaintiff
24 asserts that without obtaining the consent of the Governor, defendants' Proposed Realignment:

25 (a) exceeds their statutory authority under the BRAC Act, (b) is in derogation and violation of
26 federal laws independent of the BRAC Act that expressly grant rights to the State of

1 Washington and its Governor, as Commander-in-Chief of the Washington National Guard, and
2 (c) infringes on the right of the State to maintain an organized militia in violation of the Second
3 Amendment to the United States Constitution.

4 II. JURISDICTION AND VENUE

5 3. This is a declaratory judgment action pursuant to 28 U.S.C. § 2201, 2202, and
6 Fed.R.Civ.P. 57, that involves the interpretation of provisions of the United States Constitution
7 (U.S.C.A. Const. Art 1, § 8, cl. 15 & 16; U.S.C.A Const. Amend. II) and federal statutes
8 (10 U.S.C. § 2687 note; 32 U.S.C. § 104). Because this case arises under the Constitution and
9 laws of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10 4. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
11 because the official residence of the Governor of the State of Washington is in the Western
12 District of Washington.

13 III. PARTIES

14 5. Plaintiff, Christine O. Gregoire, is Governor of the State of Washington and
15 brings this action in her official capacity and on behalf of the State. Pursuant to the
16 Constitution and laws of the State of Washington (Article III, § 8 and RCW 38.08.020),
17 Governor Gregoire is the Commander-in-Chief of the militia in the state, except when they are
18 actively in the service of the United States.

19 6. Defendant Donald H. Rumsfeld is the Secretary of the Department of Defense
20 of the United States and, pursuant to the BRAC Act is authorized to make recommendations
21 for the closure and realignment of military installations in the United States to the Defense
22 Base Closure and Realignment Commission, and to implement those recommendations
23 ultimately approved. He is sued in his official capacity only.

24 7. Defendant Anthony J. Principi has been named by the President of the United
25 States to be Chairman of the Defense Base Closure and Realignment Commission ("the BRAC
26 Commission"). He is sued in his official capacity only.

1 8. Defendants James H. Bilbray, Phillip E. Coyle, Harold W. Gehman, Jr.,
2 James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and
3 Sue Ellen Turner have been named by the President of the United States to be members of the
4 BRAC Commission. They are sued in their official capacities only.

5 **IV. THE BRAC ACT**

6 9. The stated purpose of the BRAC Act is to "provide a fair process that will result
7 in the timely closure and realignment of military installations inside the United States." BRAC
8 Act § 2901(b).

9 10. As used in the BRAC Act, the term "military installation" is defined as:
10 a base, camp, post, station, yard, center, homeport facility for any ship, or other
11 activity under the jurisdiction of the Department of Defense, including any
12 leased facility. Such term does not include any facility used primarily for civil
works, rivers and harbors projects, flood control, or other projects not under the
primary jurisdiction or control of the Department of Defense.
13 BRAC Act § 2910(4).

14 11. As used in the BRAC Act, the term "realignment" includes:
15 any action which both reduces and relocates functions and civilian personnel
16 positions but does not include a reduction in force resulting from workload
adjustments, reduced personnel or funding levels, or skill imbalances.
17 BRAC Act § 2910(5).

18 12. Pursuant to the BRAC Act (§§ 2903, 2913, 2914(a)), the Secretary of the
19 Department of Defense was required to publish in the *Federal Register* and transmit to the
20 congressional defense committees and the BRAC Commission a "list of the military
21 installations inside the United States that the Secretary recommends for closure or
22 realignment" consistent with the BRAC Act, the force-structure plan and military value and
23 other criteria established thereunder. Defendant Rumsfeld submitted his BRAC
24 recommendations to the BRAC Commission on May 13, 2005, and published his BRAC list in
25 the May 16, 2005 *Federal Register*.

1 13. Defendant Rumsfeld's BRAC recommendations included the Proposed
2 Realignment an issue in this case.

3 14. Pursuant to the BRAC Act (§§ 2903, 2914), the BRAC Commission is
4 empowered to consider the recommendations of the Secretary of Defense and make
5 recommendations to the President of the United States for the closure and realignment of
6 military installations consistent with the BRAC Act.

7 15. The BRAC Commission met in an open meeting on August 24, 25, 26 and 27,
8 2005 to consider and make the base closure and realignment recommendations it would
9 forward to the President by September 8, 2005.

10 16. On August 26, 2005, the BRAC Commission voted to adopt defendant
11 Rumsfeld's Proposed Realignment. The BRAC Commission is expected to forward its
12 recommendations for military installation closure and realignment to the President by
13 September 8, 2005, including the Proposed Realignment.

14 17. Pursuant to the BRAC Act (§§ 2903, 2914), the President has until
15 September 23, 2005, to approve or disapprove the BRAC Commission's recommendations.

16 18. If the President disapproves any of the BRAC Commission's recommendations,
17 the BRAC Commission has until October 20, 2005 in which to transmit revised
18 recommendations to the President. BRAC Act §§ 2903, 2914.

19 19. If the President disapproves the revised recommendations, the 2005 BRAC
20 process is terminated. BRAC Act §§ 2903, 2914.

21 20. If the President approves either the original or revised recommendations, he
22 must send the approved list and his certification to Congress. If the President approves a
23 revised list, his approval and certification to Congress must occur by November 7, 2005.
24 BRAC Act § 2903, 2914.

25 21. If Congress does not enact a resolution disapproving the approved
6 recommendations within 45 legislative days after receiving them from the President, defendant

1 Rumsfeld must close and realign all military installations as recommended. BRAC
2 Act § 2904(a).

3 **V. NATURE OF THE NATIONAL GUARD**

4 22. The National Guard has a dual nature, comprising both units of state militias
5 and a part of the federal armed forces when those units are called into federal service. The
6 National Guard is the modern militia reserved to the States by Art. I, § 8, cl. 15, 16 of the
7 United States Constitution. The Washington National Guard constitutes a portion of the
8 reserve component of the armed forces.

9 23. States have the right to control the National Guard when not in federal service.
10 Members of the National Guard serve in the state militia under the command of the Governor
11 unless they are called into federal service.

12 24. The National Guard is the only military force shared by the states and the
13 federal government, and ready to carry out missions for both state and federal purposes.

14 25. The balance struck by Congress between the federal and state nature of the
15 National Guard is reflected in the various statutes requiring the consent of the Governor for
16 decisions which change the personnel and forces available for state duties and the way in
17 which such consent is obtained.

18 26. Currently and during the BRAC process, the Washington Air National Guard's
19 141st, 256th and 242^d units have not been federally mobilized into Title 10 federal status.

20 **VI. THE PROPOSED REALIGNMENT**

21 27. Included in defendant Rumsfeld's base closure or realignment list was the
22 following recommendation regarding Fairchild Air Force Base and referred to herein as the
23 Proposed Realignment:

24 Fairchild Air Force Base, WA

25 *Recommendation:* Realign Fairchild Air Force Base, WA. The 141st Air
26 Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at

1 Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R
2 aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway
3 Airport Air Guard Station, Iowa. The 256th Combat Communications Squadron
4 and 242d Combat Communications Squadron, which are ANG geographically
separated units at Four Lakes and Spokane, are relocated into available facilities
at Fairchild Air Force Base.

5 70 FR 28046, May 16, 2005. See Exhibit A.

6 28. The BRAC Commission voted to approve the basic elements of the Proposed
7 Realignment and include the recommendation in its report to the President for the 2005 closure
8 or realignment of military installations pursuant to the BRAC Act.

9 29. It is expected that the BRAC Commission's report to the President due by
10 September 8, 2005 will include a recommendation on the Proposed Realignment substantially
11 similar to the language contained in defendant Rumsfeld's list as published in the *Federal*
12 *Register*.

13 30. At no time during the BRAC process did any of the defendants request or obtain
14 the consent of Governor Gregoire to the Proposed Realignment.

15 31. At no time during the BRAC process did any of the defendants request or obtain
16 the consent of Governor Gregoire to make a change in the location, branch, organization or
17 allotment of the 141st Air Refueling Wing or its KC-135s, the 256th Combat Communications
18 Squadron, the 242^d Combat Communications Squadron, or any unit of the Washington Air
19 National Guard.

20 32. If the Governor had been requested during the BRAC process to consent to the
21 Proposed Realignment, Governor Gregoire would not have done so.

22 33. By letter dated August 9, 2005 to defendant Rumsfeld, Governor Gregoire
23 expressed her "strong objections to the Department of Defense's recommendations to the
24 [BRAC Commission] to realign the Washington Air National Guard's 141st Air Refueling
25 Wing" and stated she "emphatically [did] *not* consent to the realignment of the 141st Air
6

1 Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped
2 primary assigned KC-135 aircraft." See Exhibit B.

3 34. Governor Gregoire advised defendant Rumsfeld that his "recommendations
4 violate 10 U.S.C. § 18238 and 32 U.S.C § 104(c) which require the Governor's consent for
5 such actions." See Exhibit B.

6 35. As stated by Governor Gregoire in her letter to defendant Rumsfeld, his
7 "proposal materially interferes with, and violates, the right of the state of Washington to
8 maintain an organized state militia pursuant to the Second Amendment to the United States
9 Constitution." See Exhibit B.

10 36. In recommending the Proposed Realignment, the BRAC Commission
11 contravened the legal advice provided by its own legal counsel in a memorandum dated
12 July 14, 2005 recognizing that the BRAC Act did not authorize a change in the branch,
13 organization or allotment, or relocation or withdrawal of a National Guard unit without the
14 consent of the Governor where the unit was located.

15 **Associating the 141st Air Refueling Wing**

16 37. The first portion of the Proposed Realignment would "associate" Washington
17 Air National Guard's 141st Air Refueling Wing with the Air Force's 92d Air Refueling Wing
18 at Fairchild.

19 38. In his *Federal Register* notice, Defendant Rumsfield does not define or explain
20 what is meant by his recommendation that the Washington Air National Guard's 141st Air
21 Refueling Wing "associate" with the 92d Air Refueling Wing. The BRAC Commission also
22 does not define the term "associate".

23 39. The 141st Air Refueling Wing is a Washington Air National Guard unit located
24 entirely within the State of Washington, at Fairchild.

25 40. The 141st Air Refueling Wing is a self-sustaining unit used for both federal and
5 state missions. Members of the 141st have engaged in international, national, regional, state

1 and local missions, including homeland security and emergency response activities. The 141st
2 has been ordered into state active duty status by prior governors of the State to respond to the
3 eruption of Mount St. Helens, floods, fires and ice storms within the state, and to support local
4 law enforcement.

5 41. If the 141st Air Refueling Wing were to "associate" with the Air Force's 92d Air
6 Refueling Wing, it would be blended into the Air Force's 92d Air Refueling Wing, become
7 subject to the operational control of the Air Force and its 92d Air Refueling Wing, and neither
8 the Governor nor the Adjutant General of the Washington Military Department would maintain
9 operational control over the day to day operations of the 141st.

10 Distributing the 141st's KC-135s

11 42. The second portion of the Proposed Realignment recommends that all eight of
12 the 141st Air Refueling Wing's primary authorized aircraft be "distributed" to an Iowa Air
13 National Guard Refueling Wing.

14 43. This recommendation would leave the Washington Air National Guard without
15 any primary authorized fixed wing aircraft.

16 44. Without its eight KC-135R aircraft, the Washington Air National Guard's
17 ability to control required aircraft training missions is eliminated, its ability to maintain air
18 crew readiness is restricted, and its ability to recruit and retain officers and enlisted members
19 within the Washington Air National Guard is substantially reduced.

20 45. The Proposed Realignment of the 141st would strip the Governor of all direct
21 emergency access to the 141st's KC-135R aircraft for tactical airlift missions in response to
22 local, state, regional and national emergencies. In addition to refueling capabilities, the
23 KC-135s can be used to meet transport and cargo needs. The 141st Air Refueling Wing and its
24 KC-135 aircraft have been integral components of the State's planned response to wildfires,
25 floods and other natural disasters in the State.

46. The Proposed Realignment of the 141st would prevent the Governor from carrying out the constitutional and statutory responsibilities of her office to provide for public safety and the security of the homeland.

47. In order to provide needed help responding to the devastating effects of Hurricane Katrina, the Governor has approved use of the KC-135 aircraft and members of the 141st Air Refueling Wing. The Governor's September 2, 2005 activation of the Washington Air National Guard specifically authorizes use of the KC-135 aircraft. To date, the 141st and its KC-135s have moved over 500 National Guard members, 50 tons of cargo and engaged in 35 flying sorties to New Orleans and Gulfport in response to Hurricane Katrina, and these numbers will increase. The Proposed Realignment would prevent the Governor from extending this type of assistance to states under the National Response Plan and the national Emergency Management Assistance Compact.

Relocating the 256th

48. The third portion of the Proposed Realignment recommends that Washington Air National Guard's 256th Combat Communications Squadron, currently wholly located at the Four Lakes Communication Station outside Cheney, Washington, be "relocated" to Fairchild.

49. Four Lakes Communications Station is a federally owned facility under license to the State of Washington.

50. Relocating the 256th to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia.

Relocating the 242^d

51. The fourth portion of the Proposed Realignment recommends that Washington Air National Guard's 242nd Combat Communications Squadron, currently wholly located at Geiger Field in Spokane, Washington, be "relocated" to Fairchild.

52. Geiger Field is not a federally owned facility, it is owned by the State of Washington.

53. Relocating the 242^d from state-owned land to Fairchild without the Governor's consent would impair the Governor's rights and obligations as Commander-in-Chief of the state militia, and impair her ability to interact with and access one of her state National Guard units.

VII. FIRST CAUSE OF ACTION

Exceeds BRAC Act Authority

54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as though fully set forth herein.

55. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis for changing the branch, organization, allotment or location of the 141st, 256th and 242^d units, and the removal and transfer of the Washington Air National Guard's KC-135 aircraft.

56. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to determine how a National Guard unit is equipped or organized.

57. Defendants exceeded their BRAC statutory authority by inappropriately attempting to use the BRAC Act as a basis to relocate, withdraw, disband or change the organization of the Washington Air National Guard.

58. Defendants' recommendations to "associate" the 141st unit and "distribute" the KC-135s assigned to it are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

59. Defendants' recommendations to relocate the 256th unit and the 242^d unit are not recommendations for the closure or realignment of a military installation under the BRAC Act, and do not meet the BRAC Act definitions and criteria.

60. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a **Declaratory Judgment** declaring that defendants do not have the authority under the BRAC Act

1 to recommend the Proposed Realignment; that the Proposed Realignment exceeds defendants'
2 authority under the BRAC Act; that defendant Rumsfeld may not implement the Proposed
3 Realignment; and further declaring that the Proposed Realignment is null and void.

4 61. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
5 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
6 as Commander-in-Chief of the Washington National Guard.

7 **VIII. SECOND CAUSE OF ACTION**

8 **Violates 32 U.S.C. § 104**

9 62. Plaintiff incorporates by reference and realleges paragraphs 1 through 61,
10 inclusive, as though fully set forth herein.

11 63. Pursuant to 32 U.S.C. § 104(a), "[e]ach State . . . may fix the location of the
12 units and headquarters of its National Guard".

13 64. Pursuant to 32 U.S.C. § 104(c), "no change in the branch, organization, or
14 allotment of a unit located entirely within a State may be made without the approval of its
15 governor".

16 65. The State has fixed the locations of the 141st, 256th and 242^d units, which are
17 units located entirely with the State.

18 66. Defendants' Proposed Realignment would change the location, branch,
19 organization and/or allotment of the 141st, 256th and the 242^d, and the Governor has not granted
20 her approval for such actions.

21 67. Defendants' Proposed Realignment, without gubernatorial consent, violates
22 32 U.S.C. § 104.

23 68. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
24 Declaratory Judgment declaring that defendants' Proposed Realignment, without first
25 obtaining Governor Gregoire's approval, violates 32 U.S.C. § 104; that defendant Rumsfeld

1 may not implement the Proposed Realignment; and further declaring that the Proposed
2 Realignment is null and void.

3 69. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
4 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
5 as Commander-in-Chief of the Washington National Guard.

6 **IX. THIRD CAUSE OF ACTION**

7 **Violates the Second Amendment**

8 70. Plaintiff incorporates by reference and realleges paragraphs 1 through 69,
9 inclusive, as though fully set forth herein.

10 71. Under the Constitution of the United States, authority over the military is
11 divided between the federal and state government. U.S.C.A. Const. Art. 1, § 8. The Second
12 Amendment states: "A well regulated militia, being necessary to the security of a free state, the
13 right of the people to keep and bear arms, shall not be infringed." U.S.C.A. Const. Amend. II.
14 The guarantee of the Second Amendment regarding states' rights to a well-regulated militia
15 was made for the purpose of assuring the continuation and effectiveness of state militia.

16 72. Defendants' Proposed Realignment would infringe upon the State's
17 constitutional right to maintain a well regulated militia, and violates the Second Amendment.

18 73. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, plaintiff requests a
19 Declaratory Judgment declaring that defendants' Proposed Realignment is unconstitutional;
20 that defendant Rumsfeld may not implement the Proposed Realignment; and further declaring
21 that the Proposed Realignment is null and void.

22 74. Pursuant to 28 U.S.C. § 2202, plaintiff requests such further relief as necessary
23 to protect and enforce Governor Gregoire's rights as Governor of the State of Washington and
24 as Commander-in-Chief of the Washington National Guard.

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X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against defendants and that the Court grant the following relief:

A. An Order declaring that defendants' Proposed Realignment exceeds their statutory authority under the BRAC Act, is null and void, and shall not be implemented;

B. An Order declaring that the defendants' Proposed Realignment violates 32 U.S.C. § 104, is null and void, and shall not be implemented;

C. An Order declaring that the defendants' Proposed Realignment violates the Second Amendment to the United States Constitution, is null and void, and shall not be implemented;


D. An Order awarding plaintiff costs, fees and other expenses incurred in pursuing this litigation, pursuant to 28 U.S.C. § 2412 and any other applicable statute; and

E. Further Orders providing such additional legal or equitable relief as this Court may deem just and proper.

DATED this 7th day of September, 2005.

Respectfully submitted,

ROB MCKENNA
Attorney General


SARA J. FINLAY, WSBA #7821
Senior Counsel
Attorneys for Plaintiff

Ellington Air Guard Station, TX

Recommendation: Realign Ellington Field Air Guard Station, TX. The 147th Fighter Wing's F-16s (15 aircraft) will retire. The wing's expeditionary combat support (ECS) elements will remain in place. Ellington retains the capability to support the Homeland Defense mission. The 272d Engineering Installation Squadron, an ANG geographically separated unit moves into available space on Ellington.

Lackland Air Force Base, TX

Recommendation: Realign Lackland Air Force Base, TX. Relocate the Standard Air Munitions Package (STAMP)/Standard Tank, Rack, Adaptor, and Pylon Packages (STRAPP) function from Lackland Air Force Base, Medina Annex to McConnell Air Force Base, KS, and transfer the mission to the Air National Guard.

Hill Air Force Base, UT Edwards Air Force Base, CA, Mountain Home Air Force Base, ID, Luke Air Force Base, AZ, and Nellis Air Force Base, NV

Recommendation: Realign Hill Air Force Base, UT. Distribute the 419th Fighter Wing F-16s to the 482d Fighter Wing, Homestead Air Reserve Base, FL (six aircraft) and the 301st Fighter Wing, Naval Air Station Joint Reserve Base Fort Worth, TX (nine aircraft). The AFMC F-16s at Hill will remain in place. Realign Edwards Air Force Base, CA; Mountain Home Air Force Base, ID; and Luke Air Force Base, AZ, by relocating base-level LANTIRN intermediate maintenance to Hill, establishing a Centralized Intermediate Repair Facility (CIRF) for Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods at Hill. Realign Naval Air Station Joint Reserve Base Fort Worth, TX, and Nellis Air Force Base, NV, by relocating base-level F110 engine intermediate maintenance to Hill, establishing a CIRF for F110 engines at Hill.

Langley Air Force Base, VA

Recommendation: Realign Langley Air Force Base, VA. Realign base-level F-15 avionics intermediate maintenance from Langley Air Force Base to Tyndall Air Force Base, FL, by establishing a Centralized Intermediate Repair Facility (CIRF) at Tyndall Air Force Base, FL, for F-15 avionics.

Richmond Air Guard Station, VA, and Des Moines International Airport Air Guard Station, IA

Recommendation: Realign Richmond International Airport Air Guard Station, VA. Distribute the 192d Fighter Wing's F-16s to the 132d Fighter Wing, Des

Moines International Airport Air Guard Station, IA (six aircraft); 482d Fighter Wing Homestead Air Reserve Base, FL (three aircraft) and to backup inventory (six aircraft). Richmond International Airport Air Guard Station real property accountability will transfer to the Department of the Army. The 192d Fighter Wing's manpower will associate with the 1st Fighter Wing. Realign Des Moines International Airport Air Guard Station, IA. The F-16 aircraft currently assigned to the 132d Fighter Wing at Des Moines are redistributed to the 180th Fighter Wing, Toledo Express Airport Air Guard Station, OH (nine aircraft) and 138th Fighter Wing, Tulsa International Airport Air Guard Station, OK (six aircraft).

Fairchild Air Force Base, WA

Recommendation: Realign Fairchild Air Force Base, WA. The 141st Air Refueling Wing (ANG) will associate with the 92d Air Refueling Wing at Fairchild Air Force Base, and the 141st Air Refueling Wing's eight KC-135R aircraft are distributed to the 185th Air Refueling Wing (ANG), Sioux Gateway Airport Air Guard Station, IA. The 256th Combat Communications Squadron and 242d Combat Communications Squadron, which are ANG geographically separated units at Four Lakes and Spokane, are relocated into available facilities at Fairchild Air Force Base.

General Mitchell Air Reserve Station, WI

Recommendation: Close General Mitchell Air Reserve Station (ARS). Distribute the eight C-130H aircraft of the 440th Airlift Wing to the 94th Airlift Wing (AFR), Dobbins Air Reserve Base (ARB), GA (four aircraft) and to the 314th Airlift Wing, Little Rock Air Force Base, AR (four aircraft). Realign the 440th Airlift Wing's operations, maintenance and Expeditionary Combat Support (ECS) manpower to Fort Bragg, NC. Air National Guard units at Mitchell are unaffected by this recommendation.

Air Force Logistics Support Centers

Recommendation: Realign Altus Air Force Base, OK; Hickam Air Force Base, HI; Hurlburt Field, FL; Langley Air Force Base, VA; Little Rock Air Force Base, AR; Luke Air Force Base, AZ; and Scott Air Force Base, IL. Establish Air Force Logistics Support Centers (LSCs) at Langley Air Force Base and Scott Air Force Base by combining five major command (MAJCOM) Regional Supply Squadrons (RSS) into two LSCs.

Combat Air Forces (CAF): Establish a CAF LSC at Langley Air Force Base by

realigning RSS positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

Mobility Air Forces (MAF): Establish a MAF LSC at Scott Air Force Base by realigning RSS positions from Hurlburt Field and Sembach (non-BRAC programmatic) and LRS positions from Little Rock Air Force Base and Altus Air Force Base.

F100 Engine Centralized Intermediate Repair Facilities

Recommendation: Realign Langley Air Force Base, VA; Tyndall Air Force Base, FL; and Jacksonville International Airport Air Guard Station, FL. Establish a Centralized Intermediate Repair Facility (CIRF) for F100 engines at Seymour Johnson Air Force Base, NC by realigning base-level F100 engine intermediate maintenance from Langley Air Force Base. Establish a CIRF for F100 engines at New Orleans Air Reserve Station, LA (Air National Guard unit) by realigning base-level F100 engine intermediate maintenance from Tyndall Air Force Base and Jacksonville Air Guard Station.

Education and Training Joint Cross-Service Group Recommendations

Joint Center of Excellence for Religious Training & Education

Recommendation: Realign Maxwell Air Force Base, AL; Naval Air Station Meridian, MS; and Naval Station Newport, RI, by relocating religious training and education to Fort Jackson, SC, establishing a Joint Center of Excellence for religious training and education.

Joint Center of Excellence for Culinary Training

Recommendation: Realign Lackland Air Force Base, TX, by relocating Culinary Training to Fort Lee, VA, establishing it as a Joint Center of Excellence for Culinary Training.

Prime Power to Fort Leonard Wood, MO

Recommendation: Realign Fort Belvoir, VA, by relocating Army Prime Power School training to Fort Leonard Wood, MO.

Undergraduate Pilot and Navigator Training

Recommendation: Realign Moody Air Force Base, GA, as follows: relocate the Primary Phase of Fixed-wing Pilot Training to Columbus Air Force Base, MS, Laughlin Air Force Base, TX, and Vance Air Force Base, OK; relocate Introduction to Fighter Fundamentals

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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August 9, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I am writing to express my strong objections to the Department of Defense's recommendations to the Base Realignment and Closure (BRAC) Commission to realign the Washington Air National Guard's 141st Air Refueling Wing. If approved, the proposal would remove and transfer the unit's eight unit equipped primary assigned KC-135 aircraft from Fairchild Air Force Base in Washington State to Sioux Gateway Airport AGS, Iowa.

If accepted by the BRAC Commission, these actions would, in effect, strip me of all direct emergency access to the unit's KC-135 aircraft for tactical airlift missions in response to state, regional, and national emergencies. It would prevent me – and all those who succeed me as Governor of the state of Washington – from carrying out the constitutional and statutory responsibilities of my office to provide for public safety and the security of the homeland, including extending assistance to other states under the National Response Plan and the national Emergency Management Assistance Compact.

The Air Force's programmatic changes for the 141st Air Refueling Wing go far beyond the letter and intent of the Defense Base Closure and Realignment Act of 1990, as amended. The unit reorganization and aircraft reassignment recommendations were submitted to the BRAC Commission without *any* prior notice to, or consultation with, me or Major General Timothy J. Lowenberg, Adjutant General of the State of Washington.

These recommendations violate 10 U.S.C. Section 18238 and 32 U.S.C. Section 104(e) which require the Governor's consent for such actions. I emphatically do *not* consent to the realignment of the 141st Air Refueling Wing or the removal, relocation, or reassignment of the 141st's unit equipped primary assigned KC-135 aircraft. The proposal materially interferes with, and violates, the right of the state of Washington to maintain an organized state militia pursuant to the Second Amendment to the United States Constitution.

EXHIBIT B

The Honorable Donald H. Rumsfeld

August 9, 2005

Page 2

Pursuant to the foregoing authorities, the actions proposed by the Department of Defense cannot proceed. I reserve the right to file suit, if necessary, to compel the Department's compliance with the U.S. Constitution and federal statutes.

Sincerely,

Christine O. Gregoire

Christine O. Gregoire
Governor

cc: Anthony J. Principi, Chair, BRAC Commission

The Honorable Maria Cantwell, U.S. Senate

The Honorable Patty Murray, U.S. Senate

The Honorable Brian Baird, U.S. House of Representatives

The Honorable Norm Dicks, U.S. House of Representatives

The Honorable Richard Hastings, U.S. House of Representatives

The Honorable Jay Inslee, U.S. House of Representatives

The Honorable Rick Larsen, U.S. House of Representatives

The Honorable Jim McDermott, U.S. House of Representatives

The Honorable Cathy McMorris, U.S. House of Representatives

The Honorable Dave Reichert, U.S. House of Representatives

The Honorable Adam Smith, U.S. House of Representatives

The Honorable Mike Huckabee, Chair, National Governors Association

Doug Clapp, Office of the Governor